STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN VANATTA,

Plaintiff-Appellant,

v

BENJAMIN J. PAOLUCCI, D.O. and BENJAMIN J. PAOLUCCI, D.O., P.C.,

Defendants-Appellees.

UNPUBLISHED
November 20, 2001

No. 215889
Oakland Circuit Court
LC No. 97-540527-NH

ON REMAND

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent because I do not believe that we can conclude that it was merely harmless error to divulge the terms of plaintiff's settlement agreement with the hospital to the jury.

The terms of the settlement agreement that were divulged to the jury were that the defendant hospital paid $225,000 and that if the jury's verdict was to exceed $350,000, the hospital would pay an additional amount of $25,000. So informing the jury was clearly error. *Brewer v Payless Stations, Inc*, 412 Mich 673, 679; 316 NW2d 702 (1982). I do not believe that the fact that the jury found defendants to be not negligent compels a finding of harmless error in revealing the terms of the settlement agreement to the jury. As noted by the Supreme Court, "the *uncertainty* of juror reaction to the fact of an indemnity release is considered as a foreseeable deterrent to settlements between plaintiffs and codefendants." (Emphasis added). *Id.*

As argued by plaintiff, the jury could have concluded that the settling party was the real culprit by admitting liability (and, I would note, by settling for a large amount of money) to the exclusion of defendants.[1] Such a conclusion could have easily led the jury to determine that defendants were not negligent. Consequently, I disagree with the majority's conclusion that because the jury found Dr. Paolucci to be not negligent, there was no possibility that the jury became confused regarding how to consider the settlement. Since we have no idea how the jury came to its verdict, I believe that there was a possibility that the jury could have found that the "real defendant" was out of the suit and was primarily liable. Therefore, I cannot conclude that

[1] The Supreme Court in *Brewer*, *supra* at 677-678, specifically noted that juries might make such a conclusion, but that consideration by a jury in this regard would be prejudicial.

the error in admitting the terms of the settlement agreement with the settling hospital was harmless.

I would reverse and remand for a new trial.

/s/ Kathleen Jansen